

56.9-11 at respondent's sand mine in Junction City, Georgia. This mandatory standard requires the safety glass in cab windows be in "good condition." Inspector Mattson's 104(a) citation alleged the windshield was "broken and spider-webbed cracked right through the windshield from top to botton." Elaborating in response to questions from the bench, the inspector testified that the windshield measured 34 by about 36 inches; that the "entire windshield," some 1,224 square inches, was spider-webbed cracked on both sides starting from the upper left corner, which had a hole in it, and spreading throughout the windshield down to the "weather seal" at the bottom. The inspector said the condition of the windshield made "vision--visibility bad for the operator, especially when he got glare from the sun."

The inspector testified he understood the requirement that the safety glass be in "good condition" to mean that it "be free of cracks and broken glass . . . and kept clean." As far as the hole was concerned he felt that was not a "problem" but that the spider-web cracks were because they obstructed the operator's vision. Despite this, the inspector did not consider the condition hazardous because it was a "small operation, and there's very little foot traffic around, and what he's doing is doing clean-up work and loading trucks." The inspector said that in his judgment, the likelihood of injury to an employee was "minor" and "remote."

In response to further questions from the bench, the inspector said that he considers a windshield to be in "good condition" if "you have little cracks in the corner and so forth that doesn't obstruct the vision" and in "excellent" condition if it has "no cracks at all and it be kept clean and no cracks or no cloudiness from the sun from age." The inspector said he felt this windshield was below par for "good" because the spider-web cracks throughout the glass obstructed vision and created "eyestrain" and "glare" from the reflection of light through the cracked glass.

The inspector's description was at almost totally variance with the facts. At the time the inspector testified neither he nor his lawyer knew the operator had a picture of the windshield in question taken shortly after the citation was written and before it was replaced. He was shown this picture on cross examination but said he could not identify it because it did not show a "hole" in the "upper left corner." In its rebuttal case, the operator conclusively established that the picture of the windshield in the 644-B loader (OX-6) had no "hole" in the "upper left corner," in fact it had no hole at all. The picture also shows that the windshield was not cracked with spider-webs from top to bottom. There were only two large cracks that extended from the point of impact at about the center line of the glass